

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0477P
Negligence Penalty
For Years 1999, 2000, and 2001

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ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a distributor of medical and surgical supplies. Taxpayer sells over 140,000 different medical and surgical supplies such as gloves, syringes, dressings, intravenous products, gowns, and wound-closure products. Taxpayer sells the supplies throughout the Midwest and Northeast. Taxpayer has a distribution warehouse in Indiana. The majority of Indiana's sales are shipped from the distribution warehouse located in Indiana. Taxpayer ships the products in company-owned vehicles. Taxpayer's customers include hospitals, nursing homes, medical clinics, doctors, surgery centers, group purchasing organizations, and other distributors. Taxpayer negotiates long-term contracts to provide all medical and surgical supplies to larger customers.

A review of taxpayer's records revealed exempt sales for which taxpayer had no valid exemption certificate. Taxpayer was given an opportunity to obtain a valid exemption certificate for all exempt sales. The sales by year for all three years was prorated over the audit period as the best information available. An adjustment was made to assess sales tax on sales exempted in error.

For all three years under audit, a statistical sample was used to determine the expense purchases subject to use tax. The adjustment for purchases subject to use tax was determined in the following manner: A sample of invoices was reviewed for each expense account. Those invoices on which no sales tax was charged and no use tax was remitted were considered errors. The total errors were divided by the total of the sample for each expense account to determine the error rate. The error rate was applied to the total expense for each account for each year.

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DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Determining whether a negligence penalty applies is a factual determination. In this case, taxpayer was assessed sales tax on items for which exemption certificates could not be produced and use tax for items for which sales tax was not paid and which were not purchased for resale. This was taxpayer's first audit, and despite the complexity of the transactions involved, taxpayer maintained a less than 2% error rate.

Taxpayer has paid the liability and the corresponding interest without protest. Taxpayer has shown a good faith effort to comply with the tax laws of Indiana.

FINDING

The taxpayer's protest is sustained.